

**76TH AVENUE WEST WATER MAIN INSTALLATION DESIGN
AND CONSTRUCTION**

**between
THE CITY OF EDMONDS
and
THE CITY OF LYNNWOOD**

THIS INTERLOCAL AGREEMENT (hereinafter, "the Agreement") is entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between the City of Edmonds (hereinafter "EDMONDS"), a municipal corporation organized under the laws of the State of Washington, and the City of Lynnwood (hereinafter "LYNNWOOD"), a municipal corporation organized under the laws of the State of Washington (collectively "the Parties"), to provide for the design and construction of the EDMONDS 76th Avenue West Water Main Installation project in conjunction with the design and construction of the LYNNWOOD 76th Avenue West Sewer Trunkline Improvement project, and to define the Parties' respective rights, obligations, costs and liabilities regarding this undertaking.

RECITALS

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, the EDMONDS 2010 Water Comprehensive Plan identifies a project to install 8-inch ductile iron pipe water main, fire hydrants, and appurtenances on 76th Avenue West from Braemar Drive to 176th Street SW, and

WHEREAS, there is a 6-inch Cast Iron pipe watermain, fire hydrants, and appurtenances in EDMONDS on 76th Avenue W from 176th Street SW to 180th Street SW that will also need to be replaced and upsized to 8-inch ductile iron pipe, along with fire hydrants, and appurtenances, due to pipe age, and

WHEREAS, the 76th Avenue West Sewer Trunkline Replacement is identified in the LYNNWOOD 2010 Utility Rate Study and LYNNWOOD Capital Facilities Plan as part of the Sewer Line Replacement Program (project #SE2006053A); and

WHEREAS, LYNNWOOD is presently designing their 76th Sewer Trunkline Improvement project to increase the capacity of the existing 24" sewer trunk main to the Lynnwood Wastewater Treatment Plant at 76th Avenue West between 175th Street SW and approximately 183rd PL SW; and

WHEREAS, integrating EDMONDS' new water main installation into LYNNWOOD's construction process for the 76th Avenue West Sewer Trunkline Improvements project would be more expedient, less expensive, and less disruptive to the public than undertaking the projects separately; and

WHEREAS, the Parties mutually desire to establish a formal arrangement under which EDMONDS will pay LYNNWOOD a specified sum in exchange for LYNNWOOD's design and construction of the EDMONDS water main conduit; and

WHEREAS, LYNNWOOD has selected a qualified design consultant through a competitive process for their sewer improvements, and it therefore becomes more expedient, less expensive, and more efficient for EDMONDS to use the same qualified design consultant currently under contract with LYNNWOOD for their water main improvements; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking; and

WHEREAS, the City Councils of the City of Edmonds and the City of Lynnwood have taken appropriate action to approve their respective City's entry into this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the Parties agree as follows:

TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which EDMONDS will pay LYNNWOOD to design and construct the EDMONDS 76th Avenue West water main installation in conjunction with LYNNWOOD's design and construction of the proposed LYNNWOOD 76th Avenue West Sewer Trunkline Improvements (collectively, "the Project"). The terms, conditions, and covenants of this Agreement shall accordingly be interpreted to advance the new 76th Avenue West water main installation purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

Section 2. Term. This Agreement shall be effective upon execution by the Parties hereto. Unless terminated in accordance with Section 3, this Agreement shall remain effective until the sooner of the following events: (a) EDMONDS' written acceptance of all infrastructure provided pursuant hereto, or (b) December 31, 2014, when it shall expire automatically. The Parties may at their option renew and/or amend this Agreement for a mutually agreed upon term by a writing signed by both Parties.

Section 3. Termination. Either Party may terminate this Agreement with or without cause by providing the other Party with 30 days written notice of its intent to terminate. Termination or expiration shall not alter the EDMONDS payment obligations under Section 6 for services already rendered and shall not alter the Parties' respective obligations under Section 9 and Section 13 of this Agreement.

Section 4. Obligations of EDMONDS. EDMONDS agrees to:

- A. Provide periodic payments to LYNNWOOD to reimburse LYNNWOOD for its costs in design and construction of the EDMONDS 76th Avenue West water main pursuant to Section 6 of this Agreement.

- B. Respond promptly to information requests submitted by LYNNWOOD or its agents regarding the new water main.
- C. Review and approve plans and specifications prepared by the consultant for the water main installation. Approval shall not be unreasonably withheld.
- D. Provide (apply for and obtain) City of Edmonds permits for water main work within the City of Edmonds at no cost to LYNNWOOD. Provided, that nothing herein shall be construed as waiving or otherwise abridging the City of Edmonds regulatory authority for work within the City of Edmonds.
- E. Provide timely review of utility designs prepared by LYNNWOOD's consultant, and complete final design approval by the timelines established by LYNNWOOD to meet their construction bidding schedule.
- F. Obtain Bid Award concurrence from the EDMONDS City Council in accordance with section 7 within 45 days of the bid opening. If EDMONDS City Council fails to act within the 45 day time period, LYNNWOOD has the option to eliminate the EDMONDS work schedules from the contract.

Section 5. Obligations of LYNNWOOD. LYNNWOOD agrees to:

- A. Provide and incorporate the EDMONDS 76th Avenue West water main design into the LYNNWOOD design for sewer trunkline improvements.
- B. Assume responsibility for constructing the new 76th Avenue West water main in accordance with the design plans approved by EDMONDS (including but not limited to securing all necessary consultants, contractors, and subcontractors). All construction contracts shall be procured through a formal competitive bidding process consistent with applicable State law. LYNNWOOD shall be solely and exclusively responsible for ensuring the compliance of said bidding process with all applicable procedures required under state and local regulations.
- C. Submit to EDMONDS written invoices for payment in accordance with Section 6. Include copies of invoices from consultants and contractors, clearly indicating the EDMONDS portion of the invoices. Provide EDMONDS a brief written progress report with each invoice, describing in reasonable detail all work performed on the new water main during the period covered by the invoice.
- D. Assume lead agency status and sole responsibility for applying for and obtaining any and all regulatory permits necessary to complete the new

water main in conjunction with the LYNNWOOD 76th Avenue West Sewer Trunkline Improvement Project, including but not limited to SEPA and building permits.

- E. Provide EDMONDS personnel reasonable access to the Project's construction area for purposes of monitoring the progress of work performed on the new water main.
- F. Respond reasonably to information requests submitted by EDMONDS or its agents regarding the Project.

Section 6. Payment Schedule. The Parties agree to the following billing and payment schedule:

- A. For each outside construction contract expense incurred by LYNNWOOD regarding the Project, LYNNWOOD shall, within 30 days of the date LYNNWOOD is billed or invoiced for any undisputed charge by its consultants, contractors and subcontractors, submit an invoice to EDMONDS for the EDMONDS share of said expense for the new water main. Said invoice shall contain a reasonably detailed explanation of the methodology utilized by LYNNWOOD in calculating the EDMONDS share of each expense. Contracts for construction shall provide for separate bid schedules, or other means to clearly identify the EDMONDS portion of the Project cost for the new water main. Contracts for design shall identify all tasks and work performed associated with the EDMONDS portion of the design on invoices, fee estimates and project status reports. Time is of the essence and LYNNWOOD shall not unreasonably delay submittal of the EDMONDS share of expenses.
- B. Within 30 days of receiving any invoice pursuant to subsection 6.A, EDMONDS shall tender payment to LYNNWOOD in the form of a check, money order or other certified funds for the invoiced amount; PROVIDED THAT:
 - (1) The total payment by EDMONDS for invoices submitted by LYNNWOOD shall not exceed the actual cost of the fee estimate, bid response and/or change order for the water main (plus 2.0% of actual design costs for project management and administration related to design and 8.5% of actual construction contract cost for construction management and administration related to construction per Section 6.C) without prior written approval by EDMONDS for each expense incurred in excess of said amount;
 - (2) If LYNNWOOD fails to submit an expense invoice in a timely manner, the time for EDMONDS' payment shall be extended as is

reasonably necessary to comply with budget and state auditor guidelines as may be applicable;

(3) LYNNWOOD shall inform EDMONDS in writing in advance if expenditures necessary to complete the water main design and installation are expected to exceed these amounts.

- C. Recognizing that LYNNWOOD shall be reimbursed for their costs of incorporating the EDMONDS utilities work into the design and construction contracts for the LYNNWOOD 76th Avenue West Sewer Trunkline Improvement project, EDMONDS agrees to pay LYNNWOOD an amount equal to 2.0% of the actual design and 8.5% of the actual construction contract cost for the EDMONDS utilities work for all in-house management and administrative costs incurred by LYNNWOOD to accomplish the design and construction of the new water main in conjunction with the LYNNWOOD 76th Avenue West Sewer Trunkline Improvement project. This amount will be invoiced by LYNNWOOD and paid by EDMONDS as a 2.0% markup for design and a 8.5% markup for construction on applicable consultant and/or contractor invoices submitted to EDMONDS for payment in accordance with Section 6B above.
- D. In the event that the Parties disagree regarding the EDMONDS share of any expense incurred by LYNNWOOD regarding the Project, the Parties may agree to submit the question for resolution by a mediator or arbitrator acceptable to both Parties.

Section 7. Construction Bid Acceptance. Upon opening of construction bids, LYNNWOOD shall obtain concurrence from EDMONDS prior to award of the water main portion of the construction contract. Within 15 days after bid opening and prior to acceptance of the bid and award of a contract, LYNNWOOD shall inform EDMONDS of its financial responsibility. Concurrence with bid award by EDMONDS shall be within forty-five (45) days of receipt of notice of the bid amounts and EDMONDS financial responsibility. EDMONDS agrees, if contract award is authorized in a bid amount acceptable to their City Council, to authorize an additional 10% of the contract award amount for the EDMONDS utilities work as a construction contingency, subject to the change order authorization limitations in Section 8. The EDMONDS Public Works Director is authorized to determine the water main bid items/schedules, or combinations thereof, for which a contract will be awarded, provided that the total cost does not exceed the limits established in Section 6.

Section 8. Construction Change Orders. The following change order authorizations are hereby established for schedules and items of work to be paid by EDMONDS:

- A. The LYNNWOOD resident engineer may authorize change order requests up to \$2,000 per change order and shall immediately provide a copy of the change order authorization to the EDMONDS City Engineer.
- B. The LYNNWOOD Deputy Public Works Director / City Engineer, with the prior written concurrence of the EDMONDS City Engineer, may authorize change order requests up to \$10,000 per change order.
- C. The Mayor of LYNNWOOD, with the prior written concurrence of the Mayor of EDMONDS, may authorize change order requests up to \$50,000 per change order.
- D. Change order requests exceeding \$50,000 per change order will be reviewed by the respective City Councils of LYNNWOOD and EDMONDS for approval or denial, and any such approval shall require the concurrence of both City Councils.
- E. Change orders involving a change in scope shall have the scope change authorized in writing by EDMONDS, and be subject to the 2.0% LYNNWOOD project management and administration fee for design and 8.5% LYNNWOOD construction management and administration fee for construction per Section 6.C.

Section 9 Construction Claims and Disputes. In the event construction claims for additional payment are made by the construction contractor and/or disputes result, LYNNWOOD will endeavor to resolve the claims/disputes and obtain EDMONDS approval prior to finalizing resolution. EDMONDS will assist in resolving claims/disputes as necessary. Financial responsibility for legitimate construction claims/disputes arising from water main construction for EDMONDS shall be the sole responsibility of EDMONDS. In the event such claims exceed the financial parameters established in Section 6, EDMONDS will authorize additional funding to cover the cost of the claim/dispute.

Section 10. Construction Project Acceptance. Upon satisfactory completion of the water main work, resolution of all claims for additional payment, completion of all contract closeout documents and agreement between LYNNWOOD and the contractor regarding the final contract quantities for the water main portions of the project, LYNNWOOD shall recommend final acceptance to the EDMONDS City Engineer. Approval by the EDMONDS City Council shall be the responsibility of EDMONDS staff.

Section 11. Ownership and Disposition of Property. The new water main, and all appurtenances thereof, constructed pursuant to this Agreement shall become and remain the exclusive property of EDMONDS upon completion. The 76th Avenue West Sewer Trunkline improvements constructed shall become and remain the exclusive property of LYNNWOOD upon completion.

Section 12. Administration; No Separate Entity Created. Pursuant to RCW 39.34.030, the parties hereby appoint a Contract Administrator who will be responsible for administering this Agreement, and at the direction of the parties, this Contract Administrator shall take such action as is necessary to ensure that this Agreement is implemented in accordance with its terms. The parties hereby designate the LYNNWOOD Public Works Director, or his designee, as the Contract Administrator for this Agreement. No separate legal entity is formed by this Agreement.

Section 13. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives or subcontractors, to the fullest extent required by laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other Party or the other Party's property, and also from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives or subcontractors.

Each party specifically promises to indemnify the other party against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that each party may have under that title with respect to, but only to, the limited extent necessary to indemnify the other party. This waiver has been mutually negotiated by the parties. Each party shall also indemnify and hold the other party harmless from any wage, overtime or benefit claim of any of the first party's employees, agents, representatives, contractors or subcontractors performing services under this Agreement. Each party further agrees to fully indemnify the other party from and against any and all costs of defending any such claim or demand to the end that the other party is held harmless therefrom.

Section 14. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in Snohomish County Superior Court.

Section 15. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between EDMONDS and any employee, agent, representative or contractor of LYNNWOOD, or between LYNNWOOD and any employee, agent, representative or contractor of EDMONDS.

Section 16. Notices. Notices to EDMONDS shall be sent to the following address:

**City of Edmonds
City Engineer
121 Fifth Avenue N.**

Edmonds, WA 98020

Notices to LYNNWOOD shall be sent to the following address:


City of Lynnwood
Deputy Public Works Director / City Engineer
19100 44th Avenue W., P.O. Box 5008
Lynnwood, WA 98046-5008

Section 17. Duty to File Agreement With County Auditor. EDMONDS shall, after this Agreement is executed by both Parties, file this Agreement with the Snohomish County Auditor.

Section 18. Integration. This document constitutes the entire embodiment of the Agreement between the Parties, and, unless modified in writing by an amendment to this Interlocal Agreement signed by the Parties hereto, shall be implemented as described above.


Section 19. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provisions.

CITY OF EDMONDS

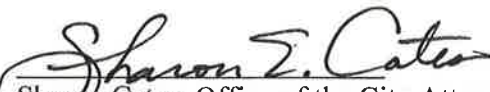
By: 
Mike Cooper, Mayor

Date: 10-17-2011

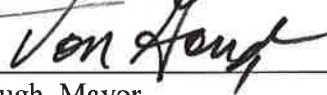
ATTEST:


Sandra S. Chase, City Clerk

APPROVED AS TO FORM:


Sharon Cates, Office of the City Attorney

CITY OF LYNNWOOD

By: 
Don Gough, Mayor

Date: 10-6-11

ATTEST:


Lorenzo Hines, Finance Director

APPROVED AS TO FORM:


Rosemary Larson, City Attorney